

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

MICHAEL ANTHONY ABELS,

Plaintiff,

v.

SCOTT FRAKES,

Defendant.

CASE NO. C11-174RSM

ORDER

This matter is before the Court for consideration of a Report and Recommendation filed by the Honorable James P. Donohue, United States Magistrate Judge (Dkt. # 10), together with a motion by petitioner to transfer his petition for habeas corpus to the Ninth Circuit Court of Appeals (Dkt. # 11). Having considered the petition, the Report and Recommendation, and petitioner's filing history, the Court now finds and ORDERS:

(1) The Court adopts the Report and Recommendation.

(2) Petitioner's motion for leave to file a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 (Dkt. # 1) and petitioner's application for leave to proceed with this action *in forma pauperis* (Dkt. # 7) are STRICKEN.

1 (3) The instant action is DISMISSED without prejudice to petitioner presenting his  
2 motion to the proper court for consideration.

3 (4) Petitioner's motion to transfer the petition to the Ninth Circuit Court of Appeals (Dkt.  
4 # 11) is DENIED. As noted in the Report and Recommendation, petitioner should have filed an  
5 application for leave to file this successive petition in the appellate court on that court's form,  
6 designated as Form 12. Circuit Rule 22-3. Although this Court has in the past transferred Mr.  
7 Abel's successive petitions to the appellate court, it declines to do so now. Petitioner is aware  
8 from his prior experience that the application should have been filed in the appellate court.  
9 Further, none of his filings provide all of the information required on Form 12.

10 (5) The Clerk is directed to send copies of this Order to petitioner and to Judge Donohue.  
11 The Clerk shall also send to petitioner a blank Form 12 for his use in filing his request in the  
12 Ninth Circuit Court of Appeals.

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14 Dated April 26, 2011.

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18 RICARDO S. MARTINEZ  
19 UNITED STATES DISTRICT JUDGE  
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